

In re Application of: Gary KLINEFELTER
 Serial No.: 09/752,514
 Filed: January 3, 2001
 For: METHOD FOR AFFECTING AND...



Art Unit: 1644
 Confirmation No.: 9981
 Examiner: P.J. NOLAN
 Washington, D.C.
 Atty.'s Docket: KLINEFELTER 1C
 Date: April 17, 2002

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THE COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20231

Sir:

Transmitted herewith is an ☐ Amendment ☒ Response to Restriction Requirement
 in the above-identified application.

- ☐ Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted.
☐ A verified statement to establish small entity status under 37 CFR 1.9 and 1.27 is enclosed.
☒ No additional fee is required.

The fee has been calculated as shown below:

(Col. 1)	(Col. 2)	(Col. 3)	Small Entity	Other Than a Small Entity
Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra	Rate	Additional Fee
Total	Minus	=	x 9	\$
Indep.	Minus	=	x42	\$
First Presentation of Multiple Dependent Claim			140	\$
TOTAL ADDITIONAL CLAIMS FEE			\$	Total \$

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col.1 of a prior amendment of the number of claims originally filed.

☒ Conditional Petition for Extension of Time

If any extension of time for a response is required applicant requests that this be considered a petition therefor.

☐ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

- ☐ First - \$ 55.00
☐ Second - \$200.00
☐ Third - \$460.00
☐ Fourth - \$720.00

Other Than Small Entity

Response Filed Within

- ☐ First - \$ 110.00
☐ Second - \$ 400.00
☐ Third - \$ 920.00
☐ Fourth - \$1440.00

☐ Less fees (\$) already paid for months extension of time on .

☐ Please charge my Deposit Account No. 02-4035 in the amount of \$. A duplicate copy of this sheet is attached.

☐ A check in the amount of \$ is attached (check no.).

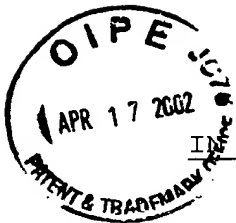
☐ Credit Card Payment Form, PTO-2038, authorizing payment in the amount of \$ is attached.

☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR Section 1.16 and all patent processing fees under 37 CFR Section 1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR Section 1.18.

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By:
 Anne M. Kornbau
 Registration No. 25,884



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: KLINEFELTER 1C

In re Application of:)	Art Unit: 1644
)	
Gary KLINEFELTER)	Examiner: P.J. NOLAN
)	
Serial No.: 09/752,514)	Confirmation No. 9981
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Filed: January 3, 2001)	Washington D.C.
)	
For: METHOD FOR AFFECTING)	April 17, 2002
AND EVALUATING MALE)	
FERTILITY)	

RESPONSE TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents
Washington, D.C. 20231

The Office Action of March 19, 2002, in the nature of a requirement for restriction, has been carefully reviewed. Favorable consideration is respectfully requested.

Restriction has been required between what the Examiner considers to be five patentably distinct inventions, namely,

Group I directed to antibodies to SP-22, presently comprising claims 1-2;

Group II, drawn to an assay for SP-22 levels, presently comprising claims 3-6;

Group III, drawn to a method of treating with antibodies, presently comprising claims 7-8;

Group IV, drawn to SP-22 or functional fragments thereof, presently comprising claims 9 and 12;

Group V, drawn to a method of treating with SP-22 or fragments thereof, presently comprising claims 10-11.

Applicants hereby provisionally elect, with traverse and without prejudice, claims 1-2, Group I, directed to antibodies to SP-22.

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This restriction requirement is traversed on the basis of MPEP Section 803, second paragraph, which requires that there be a substantial burden in examining plural groups, even if the restriction requirement is otherwise correct. It is respectfully submitted that different classification for the groups is largely immaterial, since it is assumed that the Examiner will search online rather than manually, and that a search which encompasses the medium would necessarily include methods of using the medium. Since there appears to be no serious burden, the restriction requirement should be withdrawn, and such is respectfully requested.

If the restriction requirement is maintained, it will be clear on the record that the PTO considers the two groups to be patentably distinct from one another *i.e.*, *prima facie* non-obvious from one another. This means that a reference identical to the one group would not render the other group *prima facie* obvious.

Favorable consideration is respectfully requested.

Respectfully submitted,
BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By 

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